

### **REMARKS/ARGUMENTS**

Reconsideration of the application in view of the following remarks is respectfully requested.

Claims 1-5, 15 and 17-22 stand rejected under 35 USC 112, first paragraph as being non-enabling because the claims do not recite the dimensional and functional relationships of the elements necessary to define the invention as disclosed in the specification. Applicants respectfully traverse this rejection.

The Examiner recognizes that the invention's contribution to the art of record, such as Diamond (5,804,237), is to provide a concave flexing panel such as Diamond has, but provide an initial headspace volume when the panel is concave that is greater than the head space volume taught by Diamond, so that the greater head space can absorb more pressure, thus eliminating the use of an exterior counter pressure. Further, the Examiner recognizes that the specification teaches that this is accomplished in the elected embodiment by providing a top end that has raised areas and the concave portion and raised areas are dimensioned to provide an initial head space that is greater than if these elements and their structural and dimensional relationships were not present. Thus, the increased headspace volume would allow for increased absorption of internal pressure, reducing the need for an outer, counter pressure.

Based on the Examiner's recognition of the foregoing teaching in the specification, how can the Examiner contend that the specification is non-enabling? Accordingly, Applicants respectfully submit that the specification is fully enabling and that the Examiner's rejection is not well founded.

Claims 1-2, 15 and 17-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond et al. (U.S. Patent No. 5,804,237) in view of Knize (U.S. Patent No. 3,799,388) and further in view of Creegan (U.S. Patent No. 3,105,765) and Shepard (U.S. Patent No. 4,560,080). Applicants respectfully traverse this rejection.

Diamond et al. discloses a thin wall sealed container containing edible material sterilized in a sterilization process and an inert gas under pressure, the side wall of the container being maintained rigid by the pressure of the inert gas but being easily deformable in the absence of such pressure, the container having a top end and a bottom end with at least the top end having a

concave slope relative to the inside of the container, the top end being of a material and having a thickness and shape such that the top end will retain a substantially concave slope before, during and after said sterilization process but will become convex only if there is any additional gas pressure generated due to bacterial action in the pressurized, sealed container.

In Diamond et al. the concavity of the top end extends downwardly and inwardly from an upper chime at the side wall. In contrast, the container specified in claim 1 has a concavity which is defined inwardly and spaced from the side walls or chime portion of the container. More specifically, the concavity is formed inwardly of the inwardly formed raised portions (see Fig. 3, for example).

Assuming the same dimensions, including the same slope of the concave portion, the container defined in claim 1 will have a greater headroom than the container of Diamond et al.

In view of the foregoing, it is respectfully submitted that claim 1 is clearly patentable over Diamond et al.

Knize, Creegan and Shepard teach nothing about a concavity in the top or any other location and, therefore it is clear that claim 1 is patentable over the combination of Diamond et al., Knize, Creegan and Shepard.

Claims 2, 15 and 17-22 are dependent either directly or indirectly from claim 1 and are, therefore, patentable for the same reasons, as well as because of the combination of the features set forth in these claims with the features set forth in the claims from which they depend.

Claims 3 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond et al. as applied to claim 1 and further in view of Saunders, U.S. Patent No. 3,608,774. Applicants respectfully traverse this rejection.

Claims 3 and 5 are dependent indirectly from claim 1. Since Saunders does not cure any of the deficiencies of claim 1 noted above, it is respectfully submitted that claims 3 and 5 are therefore patentable over the combination of Diamond et al. and Saunders for the same reasons advanced above in connection with claim 1 as well as because of the combination of the features set forth in these claims with the features set forth in claim 1.

In view of the foregoing, this application is now believed to be allowable, which action is respectfully requested.

MAIL CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail to in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, Alexandria, VA 22313-1450, on February 14, 2005.

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